IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 23 of 2006
With
CIVIL APPLICATION No. 1727 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AZIZABEN AKBARALI NAMAKWALA THRO' POA - Appellant(s)
Versus
DINAYABEN IDRISHBHAI KAGDI - Defendant(s)

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Appearance :
MR AG VYAS for Appellant
MR GM JOSHI for Respondent

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 22/09/2006

ORAL JUDGMENT

1. Mr. A.G. Vyas, learned counsel for the appellant and Mr. G.M. Joshi, learned counsel for the respondent.
2. Parties are heard on the question of admission

on the following substantial question of law.

> “Whether the judgment and decree passed by the learned first appellate court can be said to be in accordance with law when it has not considered the evidence available on record and has not recorded any finding as to how trial court's findings were bad in its judgment of reversal?”

3. With the consent of the parties, the appeal is heard finally.
4. The learned first appellate court in paras 1,2,3 and 4 has simply referred to the names of the parties and the dispute. In para-5, the first appellate court has recorded that it has heard the parties and has considered the evidence on record. In paras 6 and 7, the learned first appellate court has referred to the arguments of the parties.
5. In para-8, the court has observed (translated in English) “After hearing the learned counsel for the parties and on perusal of the record, it clearly appears that the trial court committed serious error in appreciating the evidence. The findings recorded by the trial court are not in accordance with the evidence. The finding recorded by the trial court that the land under the platform belonged to the State government was wrong, the finding deserves to be quashed and set aside, consequently, the appeal is

allowed”. This is the sum total of the discussion. I am really shocked and surprised to see such judgment from an appellate court. The Supreme Court and this Court have been repeatedly asking and reminding the learned first appellate courts that they are the courts of facts and being final court for facts, they are obliged and duty bound not only to give details of the pleadings, but are also required to frame questions for determination referred to by the advocates of the parties and then discuss the evidence and the law and only thereafter come to the conclusion. Even in a given case for confirmation, appellate court is obliged to refer to the arguments and record its own findings even if it is in general agreement with the findings recorded by the learned trial court. Burden is heavy upon the appellate court when it proposes to interfere with the judgment of the trial court. In such case, duty is extra heavy on the appellate court in referring to the evidence and then to come to a conclusion that the findings recorded by the trial court or the reasons given in its judgment are wrong and they deserve to be set aside. When the first appellate court interferes with the findings recorded by the trial court and proposes to reverse the judgment, then, it has to record its own finding and it cannot very cursorily and in cavalier manner say that the findings recorded by the trial court are bad and deserve to be set

aside. If the trial court has given reasons to come to a conclusion, then, it is the duty of the appellate court to give reasons to come to its own conclusion which persuades it to reverse the finding recorded by the trial court. As the judgment delivered by the learned first appellate court is no judgment in the eyes of law, it cannot be allowed to stand, it deserves to and is accordingly set aside. The matter is remitted to the learned first appellate court for deciding the matter in accordance with law and the observations made aforesaid. Parties present in the Court shall appear before the learned first appellate court on 4th November, 2006. The appeal is disposed of. Consequently, no orders on Civil Application No.1727 of 2006 are required.

6. Let copy of this order be also sent to the first appellate court enabling it to know that what it has to do and what provisions of law it is required to follow. Let copy of this judgment be sent to the Registrar [Admn.] for being kept in the service records of the learned first Appellate Judge. Let a decree be framed accordingly.

[R.S. GARG, J.]

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